

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In Re:	§	
	§	
JEFFERSON COUNTY, ALABAMA,	§	
A political subdivision of the State of	§	Case Number 11-05736-TBB
Alabama,	§	
	§	Chapter 9 Proceeding
Debtor.	§	
	§	

**JAMES R. CRANE’S MOTION TO RECONSIDER AND
VACATE ORDER GRANTING RULE 2004 EXAMINATION**

Non-party James R. Crane (“Crane”)¹ files this Motion to Reconsider and Vacate Order Granting Rule 2004 Examination (Doc. 550).

I. Factual Background

Crane recently prosecuted, and settled, a claim against JPMorgan arising out of Crane’s purchase of sewer warrants issued by Jefferson County (“the County”). The County has a state court lawsuit on file against JPMorgan relating to many of the same allegations at issue in Crane’s lawsuit.

On January 17, 2012 the County filed a motion with this Court seeking leave to serve a Rule 2004 subpoena on Crane, seeking both oral testimony and the production of documents. Crane’s counsel was provided with a copy of the motion on the day it was filed. The next day, on January 18, 2012, before Crane could respond or raise the objections set forth hereafter, the Court granted the motion.

By this motion, Crane asks that Court to reconsider and vacate its order granting the motion because: (A) the proposed subpoena seeks to compel testimony from Crane

¹ Crane appears in this bankruptcy proceeding solely to be heard on the question of the issuance of a Rule 2004 subpoena to compel testimony and document production by him.

notwithstanding the fact that he has no personal knowledge of facts relevant to this proceeding; (B) the proposed subpoena seeks to compel the production of personal financial records of Crane that have no relevance to this proceeding; and (C) the proposed subpoena seeks to impose an undue burden on Crane by requiring him to produce records relevant to the County's claims against JPMorgan, despite the fact that all of the records at issue can be obtained from JPMorgan (which is a party to this proceeding, and is a defendant in County's action against it).

II. Crane Has No Personal Knowledge of Relevant Facts and Is Therefore Not a Proper Examinee Under Rule 2004

"Third parties subject to examination pursuant to Rule 2004 are 'only those persons possessing knowledge of the debtor's acts, conduct or financial affairs so far as this relates to a debtor's proceedings in bankruptcy.'" *In re Dinubilo*, 177 B.R. 932, 939 (E.D. Cal. 1993) (quoting *In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985)). Because Crane has no personal knowledge relevant to this proceeding, the County should not be permitted to depose him.

The County seeks to subpoena Crane for one reason: For the last 24 months, Crane has prosecuted (and now settled) a claim against JPMorgan arising out of its role in the County's issuance of the 2003-B Jefferson County sewer warrants. In the course of that lawsuit, Crane obtained documents and testimony relevant to the 2003-B warrants and their sale to him. The primary source of this information was JPMorgan itself. Other documents and testimony, obtained from third parties in the course of discovery, have been produced to JPMorgan. Crane's only personal knowledge of the facts at issue in his lawsuit relate to the circumstances under which he made his purchase of the sewer warrants. He has no personal knowledge of the facts surrounding JPMorgan's activities in connection with the warrant (and related swap) transactions.

Because Crane lacks personal knowledge of any relevant facts, a Rule 2004 examination is improper under the circumstances. Crane's counsel has asked counsel for the County what relevant information they believe Crane could testify about in a deposition and they have identified none. Nor does the County's motion explain or allege what relevant personal knowledge Crane possesses about which he could testify. For these reasons, it is harassing and unduly burdensome to require Crane to appear and testify.

III. The Proposed Subpoena Is Overbroad and Seeks Personal Financial Records of Crane that Have No Relevance to the Matters at Issue in the Proceedings

In its proposed Rule 2004 subpoena, the County seeks the production of every document produced by every party and third-party in Crane's lawsuit against JPMorgan, as well as every deposition transcript and transcripts of all trial proceedings.² None of the documents that Crane produced in this litigation relate to JPMorgan's conduct—indeed, there was no correspondence at all between Crane and JPMorgan produced in this case. Among the documents he produced are Crane's personal investment account statements and related financial records, communications and records of activity between and among his broker and clearing broker concerning Crane's purchase of the Jefferson County warrants, and deposition testimony and expert reports discussing the same.³ This discovery pertained to Crane's conduct, Crane's personal finances, and the conduct of Crane's agents, and is thus not relevant to any issue in the

² The discovery material produced and depositions taken in Crane's action against JPMorgan, including the depositions and production of non-parties, are governed by an agreed confidentiality and protective order entered in Crane's case.

³ For example, JPMorgan deposed Crane's full-time financial manager, his outside financial advisor, individuals employed by Delta (his broker), and individuals employed by Pershing (his broker's clearing agent). None of these witnesses were shown to possess any knowledge relating to the County, the alleged wrongdoing of JPMorgan, or any other facts relevant to the County's bankruptcy or its tort claims against JPMorgan. Instead, JPMorgan deposed them primarily to support its arguments that Crane failed to conduct sufficient due diligence and that JPMorgan was not the seller (as defined by the Texas Securities Act) of the particular warrants purchased by Crane.

County's bankruptcy. Again, when asked what possible relevance Crane's financial information could have on the County's bankruptcy, counsel for the County could not articulate any purported relevance of this information.

IV. The Proposed Subpoena Would Impose an Undue Burden on Crane Because All Relevant Documents in His Possession Can Be Obtained from JPMorgan

As a party to the Crane lawsuit, JPMorgan was either the source, or a co-recipient, of all of the information that the County has requested in its proposed Rule 2004 subpoena. Thus, to the extent any documents or testimony from Crane's lawsuit is discoverable, it can be obtained from JPMorgan. Nonetheless, instead of serving traditional discovery requests in its state court lawsuit with JPMorgan, the County seeks to obtain discovery on JPMorgan by requesting that *Crane* produce every document, deposition, and trial transcript from the litigation. JPMorgan is a party to this bankruptcy proceeding and a party to the County's state court action against it. Thus, JPMorgan is the proper party to bear the burden of responding to the County's discovery requests and these burdens should not unfairly and unnecessarily be imposed on Crane.

V. Conclusion

For the foregoing reasons, Crane respectfully requests that the Court grant his motion to reconsider and vacate the Court's order granting a Rule 2004 examination.

Respectfully submitted,

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ATTORNEYS FOR JAMES R. CRANE

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2012 a copy of the above and foregoing was served on Debtor's Counsel, the Bankruptcy Administrator, and through the CM/ECF system to all parties receiving electronic notices in this bankruptcy case, and upon the following by e-mail and/or by overnight mail.

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